IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

CRL.A.No. 754 of 1999(D)

CC.144/1995 OF JUDL.MAGISTRATE OF FIRST CLASS-II, MUVATTUPUZHA.

APPELLANT/COMPLAINANT:

MATHEW JOSEPH,
KUZHAYKANNIYIL,
THATARAMKUNNU KARA,
KALLOORKAD.

BY ADV. SRI.BENOY THOMAS,
SRI.PAULSON THOMAS.

RESPONDENTS:

1. **MARY JOHN, MODAYIL VEEDU,**
   KALAYAMTHARA.P.O.,
   VETTIMATTAM.

2. **STATE OF KERALA, REPRESENTED BY**
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

BY PUBLIC POSECUTOR SRI. K.C. SANTHOSH KUMAR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl.Appeal No.754 OF 1999

Dated 7th February, 2007

JUDGMENT

This is an appeal filed against acquittal of the accused. Even though notice was issued as early as on 27.10.99, notice is not served so far and the defects are not yet cured. Without service of notice on the accused, appeal against acquittal cannot be interfered. Apart from the above, since it is a criminal appeal, I have gone through the merits of the case.

2. The appellant/complainant filed a petition under Section 138 of the Negotiable Instruments Act stating that a cheque issued by the accused for Rs.24,500/= was dishonoured for insufficiency of funds. Case of the accused was that she was working as Headmistress in an English Medium High School in Andhra Pradesh at the time when she was deposing before the court. During 1992 she was working in Kuwait in an English Medium School and thereafter she returned. Before getting job in Andhra Pradesh she was conducting a poultry farm. She was purchasing poultry feeds from Kottancheril Agencies at Thodupuzha owned by DW2 Paul. On credit basis she was purchasing the poultry feeds and as a security, a

blank cheque was given. She used to repay the amounts immediately after selling the chicken. The blank cheque given as security to DW2 was misused by the complainant who was a helper in the shop. In the reply notice also she has stated this as can be seen from Ext.P7. She also issued Ext.D2 notice to DW2 Paul regarding misusing of the cheque and she filed a complaint before the Chief Judicial Magistrate's Court which is marked as Ext.D4. DW2 was conducting Kottancheril Agencies on market road at Thodupuzha and the complainant was his employee. Even though at first he denied transactions with the accused, he admitted the bills and stated that those bills show that accused purchased poultry feeds from his shop. The question put forward to DW2 was that whether the blank cheque issued to him for the transactions as security was handed over to the complainant, he denied the same. DW2 also stated that he is facing many cases in the Magistrate's Court. After detailed consideration, the court found that the defence taken by the accused is more probable than the complainant's case as the cheque issued as security to DW2 before transaction was misused by the complainant is a possibility. Apart from that, court also found that the amount, date and name written in Ext.P1 cheque was in a different handwriting from that of the

signature in Ext.P1. That also supports the case that blank cheque signed by the accused was handed over to DW2 in the year 1992. The court also found that this is probable by the fact the cheque preceding and succeeding Ext.P1 cheque came in the bank for collection between 30.3.1992 and 22.6.1992 as can be seen from Ext.D1 pass book. However, Ext.P1 cheque in question is seen dated 2.1.1995. Since the cheques issued preceding and succeeding Ext.P1 cheque were issued in 1992, the blank cheque issued in 1992 to DW2 was misused by the complainant is possible. Since view expressed by the trial court is a plausible view and defence case is probable, no case is made out for an inference. In this connection, I also refer to the decision of the Apex Court in **Narayana Menon** v. **State of Kerala** (2006 (3) KLT 404 SC). After going through the evidence as well as findings, I agree with the findings of the trial court and there is no merit in the appeal.

The appeal is dismissed.

J.B.KOSHY
Judge

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